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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120213130-2435-02]

RIN 0648-XA973

Fisheries of the Northeastern United States; Final 2012 Spiny Dogfish Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule implements a catch limit, commercial quota, and possession limit for the spiny dogfish fishery for the 2012 fishing year. The action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. The final management measures are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass. The action is expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER], through April 30, 2013.

ADDRESSES: An environmental assessment (EA) was prepared that describes the action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis

(IRFA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid Atlantic Fishery Management Council, Suite 201, 800 N. State St, Dover, DE 19901. The EA/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish (Squalus acanthias) were declared overfished by NMFS in 1998. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to implement measures to end overfishing and rebuild the spiny dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP) that was implemented in 2000. As a result of the conservation measures in the FMP, the spiny dogfish stock was declared to be successfully rebuilt in 2010.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The annual quota is allocated to two semi-annual quota periods, as follows: Period 1, May 1 through October 31 (57.9 percent); and Period 2, November 1 through April 30 (42.1 percent).

The MAFMC's Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and makes recommendations on acceptable biological catch (ABC). This recommendation is then used as the basis for catch limits and other management measures developed by the MAFMC's Spiny Dogfish Monitoring

Committee and Joint Spiny Dogfish Committee (which includes members of the NEFMC). The MAFMC and NEFMC then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment. NMFS proposed the specifications set here in the Federal Register on March 19, 2012 (77 FR 15991), with a 30-day public comment period. NMFS received six comments, which are addressed below.

A detailed description of how the 2012 spiny dogfish ABC and associated specification measures were derived, and the range of alternatives analyzed, are provided in the proposed rule and in its supplementary materials (see ADDRESSES), and are not repeated here. The final approved specifications for the 2012 spiny dogfish fishery are described below.

Final Measures

NMFS is implementing the following specifications for the spiny dogfish fishery for the 2012 fishing year:

1. The spiny dogfish annual catch limit (ACL) is 44.737 million lb (20,292 mt);
2. The spiny dogfish commercial quota is 35.694 million lb (16,191 mt); and,
3. The spiny dogfish possession limit remains at 3,000 lb (1,361 kg) per trip.

Based on the percentage allocations specified in the FMP, quota Period 1 (May 1 through October 31) is allocated 20.667 million lb (9,374 mt), and quota Period 2 (November 1 through April 30) is allocated 15.027 million lb (6,816 mt). The significant quota increase from fishing year 2011 quota, in conjunction with the status quo possession limit, should help avoid prolonged fishery closures, extend the fishing season, reduce regulatory discards, and maximize revenues for vessels that land spiny dogfish.

Comments and Responses

NMFS received six comments to the proposed specifications. These commenters offered five distinct comments.

Comment 1: Two Massachusetts-based commercial fishing organizations commented that they support the proposed spiny dogfish commercial quota and possession limit.

Response: NMFS agrees that the final commercial quota and status quo possession limit meet the objectives of the Spiny Dogfish FMP and will maximize landings for the fishery during the 2012 fishing year.

Comment 2: The North Carolina Division of Marine Fisheries commented that it supports the proposed quota, but recommended that the possession limit be increased to 4,000 lb (1,815 kg), consistent with the MAFMC's recommendation.

Response: NMFS disagrees that the spiny dogfish possession limit should be increased. NMFS considers the 3,000 lb (1,361 kg) possession limit to be the most appropriate spiny dogfish possession limit for the 2012 fishing year. As noted above, NMFS believes that the status quo possession limit in conjunction with the increased quota has the greatest likelihood of prolonging the fishing season, and of preventing mid-season fishery closures and their associated negative economic impacts. NMFS expects these specifications will distribute spiny dogfish landings and revenues across the fishing year, rather than increasing per-trip revenues under a shorter fishing season. The Atlantic States Marine Fisheries Commission (Commission) has also implemented this possession limit in state waters for 2012.

Comment 3: One fishing industry commenter argued that the science used in the spiny dogfish stock assessment and for setting specifications is flawed. The commenter suggested that spiny dogfish biomass has been underestimated, and that catch limits for female spiny dogfish

should be between 66 and 75 million lb (30,000-34,000 mt), while catch limits for male spiny dogfish should be between 70 and 100 million lb (32,000-45,000 mt). The commenter further argued that the high biomass of male dogfish contributes to predation on spiny dogfish pups and more valuable groundfish species, and suggested that a male-only spiny dogfish fishery should be implemented.

Response: National Standard 2 of the Magnuson-Stevens Act requires that fishery management measures be based upon the best available scientific information. The final catch limits and specifications being implemented by this rule represent the best available scientific information. They are based on the results of peer-reviewed stock assessments, the recommendations of the SSC, and the goals of the FMP. A description of how the 2012 spiny dogfish catch limits were calculated is given in the proposed rule for this action. There is no scientific justification for specifying the catch limits at the levels recommended by the commenter, and such high limits would be inconsistent with the requirements of the FMP. The issue of a male-only spiny dogfish fishery is beyond the scope of this rule, and would require an amendment to the FMP. NMFS notes that the MAFMC and NEFMC are currently developing Amendment 3 to the Spiny Dogfish FMP, but have removed from the range of alternatives consideration of male-only spiny dogfish management measures.

Comment 4: One comment submitted by a conservation organization opposed the proposed spiny dogfish commercial quota, and recommended that the quota only be increased to 30 million lb (13,608 mt), consistent with the Commission's initial 2012 quota recommendation. The commenter cited numerous concerns with the status of the spiny dogfish stock, including vulnerable life history traits, poor pup production, projected future declines in spawning stock biomass, declines in the average size of pups and mature females, skewed sex ratios, and several

sources of uncertainty in the stock assessment. The commenter argued that the proposed quota represents an unnecessarily high increase that is not in the best long-term interests of the fishery. Additionally, the commenter suggested that the MAFMC's risk policy used to calculate the spiny dogfish ABC (i.e., using the catch level that corresponds to a 40-percent probability of overfishing) should be more precautionary given the stock's inherent vulnerability. For comparison, the commenter noted that the Atlantic Highly Migratory Species Fishery Management Plan for coastal sharks uses a 70-percent probability of success to select management measures, and there should be less than a 20-percent chance of a management measure resulting in a stock decline.

Response: NMFS agrees that the commercial quota of 35.694 million lb (16,191 mt) recommended by both Councils represents a dramatic increase from earlier quota levels that favors short-term yield over long-term fishery stability. NMFS also acknowledges that all of the other listed concerns with spiny dogfish stock status are valid. Most importantly, spiny dogfish spawning stock biomass is projected to decline significantly between 2014 and 2020 due to poor pup production. However, while the proposed quota represents the upper limit of the range of acceptable quota alternatives, it is not expected to result in overfishing. If spiny dogfish biomass declines in future years, harvest levels will have to be appropriately reduced in those years. While a 30-million-lb (13,608-mt) quota may be a more precautionary and stabilizing recommendation, the quota set here still reflects the best available scientific information, and is consistent with the recommendations of the SSC and the requirements of the FMP and Magnuson-Stevens Act. Therefore, there is no compelling biological or legal justification to reject the commercial quota recommendation of both Councils.

Comment 5: One public commenter argued that the spiny dogfish quota should be reduced by 50 percent, to 10 million lb (4,536 mt). No justification was provided for this reduction.

Response: NMFS disagrees that such a reduction in spiny dogfish harvest levels is necessary at this time. Spiny dogfish spawning stock biomass has been increasing in recent years, and is currently above target levels. The proposed increase in quota is supported by the best available scientific information and follows the ABC and specification process defined in the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this rule is not significant for the purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the action and EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Six comments were received on the proposed rule. For a summary of the comments, and NMFS's responses to them, see the Comments and Responses section above. None of the comments raised issues or concerns related to the IRFA, and no changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The increase in the spiny dogfish commercial quota would impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to MAFMC's analysis, 2,942 vessels were issued spiny dogfish permits in 2010. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from (in descending order) Massachusetts, New Jersey, New Hampshire, Rhode Island, New York, North Carolina, and Virginia.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The purpose of this action is to increase spiny dogfish catch limits and landings, consistent with the best available science, thereby extending the duration of the fishing season and increasing revenue relative to the status quo. The action is expected to maximize the short-

term profitability for the spiny dogfish fishery during the 2012 fishing year, without jeopardizing the long-term sustainability of the stock. Therefore, the economic impacts resulting from the action are expected to be positive, and there were no other alternatives considered that could have further increased the economic yield from the fishery while remaining constant with the Magnuson-Stevens Act and the goals of the FMP.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the spiny dogfish fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office’s website at www.nero.noaa.gov.

Authority: 16 U.S.C. 1801 et seq.

Dated: May 16, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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